



Virginia  
Regulatory  
Town Hall

## Proposed Regulation Agency Background Document

<b>Agency Name:</b>	145
<b>VAC Chapter Number:</b>	20
<b>Regulation Title:</b>	Board for Soil Scientists Rules and Regulations
<b>Action Title:</b>	Amending
<b>Date:</b>	July 31, 2000

This information is required pursuant to the Administrative Process Act (§ 9-6.14:9.1 *et seq.* of the *Code of Virginia*), Executive Order Twenty-Five (98), Executive Order Fifty-Eight (99), and the *Virginia Register Form, Style and Procedure Manual*. Please refer to these sources for more information and other materials required to be submitted in the regulatory review package.

### Summary

*Please provide a brief summary of the proposed new regulation, proposed amendments to an existing regulation, or the regulation proposed to be repealed. There is no need to state each provision or amendment or restate the purpose and intent of the regulation; instead give a summary of the regulatory action and alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.*

The Board for Professional Soil Scientists (the Board) was created to regulate a voluntary certification program for professional soil scientists. The Board's current regulations became effective May 5, 1993. The Board has reviewed its regulations and identified several changes that are necessary to accurately reflect the intent of the Board and to ensure that any unnecessary requirements are removed. The text of the regulations has been reorganized and revised for clarity and ease of use.

### Basis

*Please identify the state and/or federal source of legal authority to promulgate the regulation. The discussion of this statutory authority should: 1) describe its scope and the extent to which it is mandatory*

*or discretionary; and 2) include a brief statement relating the content of the statutory authority to the specific regulation. In addition, where applicable, please describe the extent to which proposed changes exceed federal minimum requirements. Full citations of legal authority and, if available, web site addresses for locating the text of the cited authority must be provided. Please state that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the proposed regulation and that it comports with applicable state and/or federal law.*

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Section 54.1-201 of the Code of Virginia provides the authority for the Board to promulgate regulations for those individuals who seek to be certified by the Commonwealth as professional soil scientists. The content of the regulations is up to the discretion of the Board, but shall not be in conflict with the purposes of the statutory authority (§ 54.1-2200 et seq.)

### Purpose

*Please provide a statement explaining the need for the new or amended regulation. This statement must include the rationale or justification of the proposed regulatory action and detail the specific reasons it is essential to protect the health, safety or welfare of citizens. A statement of a general nature is not acceptable, particular rationales must be explicitly discussed. Please include a discussion of the goals of the proposal and the problems the proposal is intended to solve.*

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The public assumes that if a soil scientist is state certified, they have complied with education, experience and examination requirements. In order to protect the public, the Board desires to clarify the regulations so that those individuals seeking state certification in this profession can more easily understand the entry, renewal and reinstatement process. The current regulations are repetitive and unclear in several places. The Board's intent is to more thoroughly define the type of experience needed for certification and to list the fees that are required for entry, for renewal and for reinstatement. Applicants for certification are often confused by the current entry requirements.

### Substance

*Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. Please note that a more detailed discussion is required under the statement providing detail of the regulatory action's changes.*

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The substantive changes to existing regulations include:

18 VAC 145-20-10 is amended to add a definition for "qualifying experience" and "Department."

18 VAC 145-20-20, 18 VAC 145-20-30, 18 VAC 145-20-40 and 18 VAC 145-20-50 are repealed because the information is more appropriately explained in the sections that follow.

18 VAC 145-20-80 is deleted and more appropriately placed following the examination section.

18 VAC 145-20-90 is amended to provide examples of the type of work that will qualify as experience. The Board also expands the accepted qualifying experience by allowing applicants to submit experience from two or more of the outlined areas and adds laboratory studies and research/teaching to the accepted experience. Finally, this section clarifies that credits used to meet education requirements may not be used to meet experience requirements.

18 VAC 145-20-91 is language moved from 18 VAC 145-20-110 to more appropriately follow the qualifying experience section.

18 VAC 145-20-100 is amended to require that the examination be administered at least twice a year. Also to clarify that applicants approved for the examination shall take the examination within one year of approval versus the current two years. Those who fail the examination may retake the exam or any part thereof within one year of the initial failure. This change from two years to one year is justified because the examination is currently scheduled four times a year. The Board believes this is sufficient time to pass all parts of the examination.

18 VAC 145-20-110 is deleted because this language was moved to a more appropriate section.

18 VAC 145-20-111 is language moved from 18 VAC 145-20-80. This information regarding waiver from examination is more appropriately placed after the section regarding examinations.

18 VAC 145-20-120 is amended since certificates now expire two years from the last day of the month in which they were issued.

18 VAC 145-20-130 is amended to clearly list the procedures for renewal including language regarding the certificate holder's responsibility to inform the Department of Professional and Occupational Regulation (the Department) of his current mailing address. This is necessary for the Department to notify the regulant regarding renewal or other information. This section also clarifies that when a certificate is revoked and an applicant applies again, the examination shall not be waived.

18 VAC 145-20-140 is amended to clarify that if a regulant fails to renew within 180 days of the expiration date on the certificate, reinstatement procedures must be followed. If the certificate is not renewed within 360 days, the regulant shall apply as a new applicant and meet the education, experience and examination requirements as determined by the Board.

18 VAC 145-20-150 is deleted because this information is covered in a previous section.

18 VAC 145-20-151 is added to clearly state the fees for entry, examination, reexamination, renewal and reinstatement. The addition of this chart sets this information apart.

18 VAC 145-20-160 is amended to clarify that a certificate holder shall not submit false statements or fail to disclose facts for recertification.

18 VAC 145-20-170 is amended to add a possible violation if the certificate holder fails to notify the Board of a change of address within 30 days. Language is added to clarify that the board may suspend or revoke a license when the regulant has been found to have violated any provision of Chapter 22 of Title 54.1 of the Code of Virginia or any regulation of the Board.

## Issues

*Please provide a statement identifying the issues associated with the proposed regulatory action. The term "issues" means: 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions; 2) the primary advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, please include a sentence to that effect.*

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The primary advantage of these regulations is the added public protection. If a professional soil scientist is certified by the state, consumers of their services (individuals, businesses and government agencies) assume that the professional soil scientist has successfully complied with minimum entry requirements of education, experience and examination. These regulations clarify those minimum requirements. The applicant benefits because a wider scope of experience will be accepted. The applicant should also benefit from improved clarity regarding the entry and renewal requirements.

## Fiscal Impact

*Please identify the anticipated fiscal impacts and at a minimum include: (a) the projected cost to the state to implement and enforce the proposed regulation, including (i) fund source / fund detail, (ii) budget activity with a cross-reference to program and subprogram, and (iii) a delineation of one-time versus on-going expenditures; (b) the projected cost of the regulation on localities; (c) a description of the individuals, businesses or other entities that are likely to be affected by the regulation; (d) the agency's best estimate of the number of such entities that will be affected; and e) the projected cost of the regulation for affected individuals, businesses, or other entities.*

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The Board of Soil Scientists regulates individuals in the practice of soil evaluation and analysis as prescribed in Title 54.1, Chapter 22 of the Code of Virginia. The Board consists of five (5) members, and generally meets quarterly. The Department of Professional and Occupational Regulation supports the Board by performing a variety of tasks including: assisting applicants seeking a license, assisting licensees with the renewal process, and helping consumers file and resolve complaints against a licensee who has violated regulations. All costs incurred in support of board activities and regulatory operations are paid by the department and funded through fees paid by applicants and licensees. The following analysis explains the types of costs incurred by the department in support of the Board's operations, and provides estimates of revenues expected to be generated on behalf of the Board.

**Board for Soil Scientists  
Analysis of Expenses by Category**

**Background**

All Boards within the Department of Professional and Occupational Regulation must operate within the Code provisions of the Callahan Act (54.1-113), and the general provisions of 54.1-201. Each regulatory program's revenues must be adequate to support both its direct costs and a proportional share of indirect costs. The department allocates costs to its regulatory programs based on consistent, equitable, and cost-effective methodologies. The following explanations provide a description of the types of costs included in each category of expenditure.

The financial data and projections provided are current as of 3/22/2000 when the most recent financial analysis was presented to the board. The department tracks the board's revenues and expenditures on a monthly basis. Current revenues and expenditures indicate that the board's financial position at the close of the current biennium may be more favorable than projected. The Department will review the board's financial position in accordance with the Callahan Act after the close of the current biennium.

**Expenses**

***Direct Board and Board Administration Expenses***

Board expenses are those costs incurred directly by the Board for conducting meetings and public hearings, conducting regulatory review, and providing information to licensees and the public. Specific expenditures charged in this category include travel and per diem expenses incurred by board members while conducting board activities, printing, and postage for regulations, newsletters, and other information. Board Administration expenses include the costs of department staff who directly support board operations by administering the regulatory program, reviewing applications, issuing licenses, responding to questions, conducting board meetings, and providing assistance to licensees and the public. Charges are allocated based on each board's percentage of licensees.

1996-98	\$4,154
1998-00	\$2,735
2000-02	\$2,807
2002-04	\$2,807

***Administration of Exams***

Examinations expenses represent the costs of department staff who work with boards to develop examinations, manage and administer examinations, and contract with vendors for the development and/or administration of examinations. Costs are allocated based on percentages of time and effort given to each board by Examination staff, and the number of exams given for each board.

1996-98	\$7,413
1998-00	\$5,766
2000-02	\$5,918
2002-04	\$5,918

***Enforcement***

Enforcement expenses represent the costs associated with complaint processing, investigation of allegations against licensees, and adjudication of cases. These costs are allocated to each board based on activity involved in investigations and caseloads.

1996-98	\$ 0
1998-00	\$6,959
2000-02	\$7,143
2002-04	\$7,143

### ***Legal Services***

Legal Service charges include billings from the Office of the Attorney General for hourly support provided to each board, and the costs of court reporters and hearing officers. Charges are allocated based on related activities.

1996-98	\$510
1998-00	\$661
2000-02	\$679
2002-04	\$679

### ***Information Systems***

Information Systems expenses include costs associated with systems processing, maintaining information systems, maintaining licensee record information, and investment in technology to make the information system more efficient and useful. Charges are allocated based on each board's percentage of licensees.

1996-98	\$859
1998-00	\$102
2000-02	\$105
2002-04	\$105

### ***Facilities Management and Support Services***

These are costs associated with facilities management, procurement and contracting activities, and the mailroom. Charges are allocated based on each board's percentage of licensees.

1996-98	\$655
1998-00	\$326
2000-02	\$335
2002-04	\$335

### ***Agency Administration***

Agency Administration expenses include the department's general administrative support and overhead costs, including the office of the Agency Director, personnel, administration, and finance. Charges are allocated based on each board's percentage of licensees.

1996-98	\$630
1998-00	\$ 93
2000-02	\$ 96
2002-04	\$ 96

### ***Transfers/Other***

The Transfers/Other category includes transfers to the General Fund of the Commonwealth as mandated in the Appropriations Act, generally to pay the department's share of central state processing and support costs. Charges are allocated based on each board's percentage of licensees.

1996-98	\$74
1998-00	\$ 2
2000-02	\$ 2
2002-04	\$ 2

**Revenues**

All program revenues consist of monies collected from various licensing fees approved by the Board. The program receives no general fund support.

1996-98	\$16,325
1998-00	\$20,615
2000-02	\$17,975
2002-04	\$17,975

**Cash Flow**

	<u>Beginning Cash</u>	<u>Revenues</u>	<u>Expenditures</u>
1996-98	\$( 8,141)	\$16,325	\$14,295
1998-00	\$( 6,111)	\$20,615	\$16,645
2000-02	\$( 2,141)	\$17,975	\$17,084
2002-04	\$( 1,250)	\$17,975	\$17,084

**Callahan Calculation**

Actual and projected Callahan percentages for each biennium are provided below.

At the close of the 1996-98 biennium, the Callahan percentage for the Board was -42.7%. During the 1998-00 biennium, the Board's financial position was improved substantially, and is expected to continue to improve. A surge in licensing activity due to proposed legislation increased the numbers of Soil Scientist who choose to be licensed, and may result in faster than expected improvement. The department will continue to closely monitor the progress of the board's financial position, and adjust fees as necessary, to ensure an adequate, but not excessive, cash balance in accordance with the provisions of the Callahan Act.

1996-98	(42.7)%
1998-00	(12.9)%
2000-02	( 7.3)%
2002-04	(2.1)%

## Detail of Changes

*Please detail any changes, other than strictly editorial changes, that are being proposed. Please detail new substantive provisions, all substantive changes to existing sections, or both where appropriate. This statement should provide a section-by-section description - or cross-walk - of changes implemented by the proposed regulatory action. Where applicable, include citations to the specific sections of an existing regulation being amended and explain the consequences of the proposed changes.*

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18 VAC 145-20-10 is amended to add two definitions of terms used throughout the regulations:

The definition of "department" has been added to replace the term "Department of Professional and Occupational Regulation" in the body of the regulations. This makes the regulations easier to read.

The definition of "qualifying experience" has been added to specify the nature of the occupation-related work that may be considered by the Board in determining eligibility or other decisions under the proposed regulations.

18 VAC 145-20-20 through 18 VAC 145-20-50 are proposed for repeal in their entirety. They contain repetitive and confusing information regarding entry requirements.

18 VAC 145-20-70 is amended to clarify that applicants shall have a degree in soil science curriculum and to consistently use the term "professional soil scientist." (This change is made throughout the regulations but shall only be cited in this passage.)

18 VAC 145-20-80 is deleted and more appropriately placed after the examination section.

18 VAC 145-20-90 is amended to allow applicants to meet experience requirements in two or more of the identified areas and deletes the requirement that some experience be in particular areas and the remainder in other areas. This is less restrictive than the current regulations. It allows more flexibility in the type of qualifying experience the applicant has to demonstrate. The identified areas are also expanded by giving examples of the type of soil evaluation, and allows experience in laboratory studies in addition to field studies. Applicants could also use experience in research/teaching as qualifying experience. Section 145-20-90 B.2. is deleted because the amended language makes it unnecessary. The education area is amended to clarify that credits used to meet education requirements may not be used to meet experience requirements.

18 VAC 145-20-91 is language moved from 18 VAC 145-20-110 in effort to have information in more appropriate order. In addition, the language is simplified to allow the applicant to petition the board to review the syllabus and other documents of a course not listed in subsection A if

they desire academic credit. The applicant shall demonstrate course equivalency in order to receive academic credit.

18 VAC 145-20-100 is amended regarding the administration of the examination. The amendments were made to clarify that the Department is responsible for when the examination is offered. Section D, regarding a second examination notice is deleted because it is unnecessary and could be confusing to the applicant.

18 VAC 145-20-100 D (amended) is revised to clearly state that a candidate for the examination has one year after approval to take the exam or submit a new application. The examination is currently scheduled four times a year. The Board feels this is sufficient time to pass all parts of the examination. Further amendments to Subsection E delete unnecessary language regarding access to examination papers, scores and answer sheets. The Board shall continue to provide pass/fail information.

Subsection F is more lenient in allowing applicants to retake a failed part of the examination. If an applicant does not retake the examination within the one-year period, a new application with updated information regarding convictions and board actions in other states is required. This application process requires review by Board staff and thus explains the necessity for a new fee.

18 VAC 145-20-110 is deleted because it was more appropriately placed in the regulations as 18 VAC 145-20-91.

18 VAC 145-20-111 is language previously included in 18 VAC 145-20-80 regarding the two ways in which an applicant can receive an examination waiver. This is more appropriately placed after examination information.

PART III of the regulations is renamed to more accurately reflect the content regarding renewal, reinstatement and fees.

18 VAC 145-20-120 is amended to reflect current operating practice that certificates expire two years from the last day of the month in which they were issued.

18 VAC 145-20-130 is renamed to more clearly outline the procedures for renewal. Language is added to require the certificate holder to keep the Department informed of his current mailing address. Subsection B is added to clarify that if the certificate is renewed after 30 days from the expiration date and prior to 180 days of the expiration date, the effective date of the renewal is the original renewal date. Language is also added to clarify that certificates suspended by board order shall not be renewed until the period of suspension has ended and the terms of the board's order have been met. Language is added to Subsection E to further explain a revoked certificate. The examination shall not be waived for individuals whose certificate has been revoked. The Board concluded that the examination waiver in Section 18 VAC 145-20-80 was intended for applicants who have ten years of qualifying experience and should not be used for re-entry for the regulant whose license has been revoked.

18 VAC 145-20-140 is amended to clarify that if the regulant does not renew within 180 days following the expiration date, the regulant is no longer a certificate holder and will be required to apply for reinstatement. The Board added language that the applicant may apply by examination or by reciprocity. Further amendments clarify that regulants who do not reinstate within 360 days shall apply as a new applicant, meet current education and experience requirements, and may be required by the Board to take the examination.

18 VAC 145-20-150 is deleted because this information was moved to 18 VAC 145-20-130 E.

18 VAC 145-20-151 is added to provide all information regarding fees in one section of the regulations. The intent is to provide more clarity regarding the handling of fees and the amount due. The fees are not altered from the current regulations.

18 VAC 145-20-160 is amended to clarify that a certificate holder shall not submit false statements or fail to disclose facts for recertification.

18 VAC 145-20-170 is amended to add a possible violation if the certificate holder fails to notify the Board of a change of address within 30 days. Language is added to clarify that the board may suspend or revoke a license when the regulant has been found to have violated any provision of Chapter 22 of Title 54.1 of the Code of Virginia or any regulation of the Board.

## Alternatives

*Please describe the specific alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action.*

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The Board considered whether there was a less burdensome alternative when considering these amendments to the regulations. The Board concluded that the changes provide necessary public protection and give the regulant more flexibility in meeting the experience requirements and passing failed parts of the examination. Failure to adopt these changes will allow unnecessary requirements and unclear language to remain in the regulations.

## Public Comment

*Please summarize all public comment received during the NOIRA comment period and provide the agency response.*

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No comments were received.

## Clarity of the Regulation

*Please provide a statement indicating that the agency, through examination of the regulation and relevant public comments, has determined that the regulation is clearly written and easily understandable by the individuals and entities affected.*

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Considerable effort was made to identify unnecessary and unclear language in these regulations and to make amendments that are more easily understood. The suggested revisions more clearly outline the entry and renewal requirements for applicants.

**Periodic Review**

*Please supply a schedule setting forth when the agency will initiate a review and re-evaluation to determine if the regulation should be continued, amended, or terminated. The specific and measurable regulatory goals should be outlined with this schedule. The review shall take place no later than three years after the proposed regulation is expected to be effective.*

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The regulations will be reviewed during the board's normal course of regulatory review that in no case shall exceed three years from the effective date of these regulations. The review will be conducted to determine if the regulations should be continued, amended or terminated, including a description of specific and measurable goals the regulations are intended to achieve.

It should be noted that Section 54.1-113 of the Code of Virginia mandates regulatory boards to examine fee structures at the end of each biennium. It is the Department's custom to encourage the boards to examine regulations as described above at the same time the fee structure is examined for compliance.

**Family Impact Statement**

*Please provide an analysis of the proposed regulatory action that assesses the potential impact on the institution of the family and family stability including the extent to which the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.*

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The proposed regulations are expected to have no adverse impact on families in the Commonwealth.